

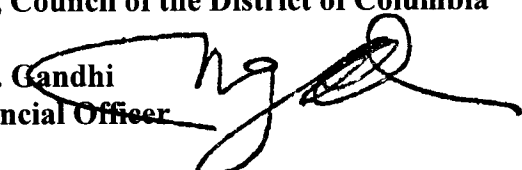
**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Chief Financial Officer**



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Vincent C. Gray  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi   
Chief Financial Officer

**DATE:** March 11, 2009

**SUBJECT:** Fiscal Impact Statement – “Processing Sales Tax Clarification Act of 2009”

**REFERENCE:** Bill Number 18-21 – Introduced

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**Conclusion**

Funds are not sufficient in the FY 2009 through FY 2012 budget and financial plan to implement the proposed legislation as written. By appearing to exempt hotels from sales tax on public utilities, the proposed legislation would reduce public utility tax collections by \$4.8 million in FY 2009 and \$20.8 million in the FY 2009 through FY 2012 financial plan period.

This fiscal impact could be eliminated by clarifying the language of the bill so the exemption clearly covers only the separately metered utility expenditures of restaurants on hotel and motel premises, but not all the utilities consumed by the hotels and motels.

**Background**

The proposed bill clarifies the domain of the sales tax exemption on utilities directly used in manufacturing, assembling, processing or refining tangible personal property for sale and resale by repealing the two specific exemptions under District Code subsections §47-2001(n)(1)(D) and §47-2201(a)(1)(B), adding a new exemption clause under subsection §47-2005(11) to include sales of natural or artificial gas or electricity directly used in a hotel or restaurant. The proposed legislation defines hotels as establishments with at least 30 guest rooms and a dining room in the same or a connected building, regularly providing food and lodging to transients, and restaurants as licensed retail establishments principally preparing and serving food to the public, including pizzerias, delicatessens, ice cream parlors, cafeterias, take-out counters, caterers, and separately-metered hotel and motel food service facilities, and excluding beverage counters, coffee shops and juice bars.

## Financial Plan Impact

Current law already exempts sales of utilities used in processing intermediate goods for final sale. Exempt firms submit an exemption certificate they obtain from the Office of Tax and Revenue ("OTR") to their utility companies to receive a bill adjusted for the exemption. At present, restaurants, including those on a hotel or motel property with separate metering, are exempt from all sales tax on natural gas charges and almost all sales tax on their electricity charges. This legislation would expand the exemption to include all electricity charges. The potential negative fiscal impact from this expansion is likely to be offset by the elimination of an exemption for utilities used to process intermediate goods not for *final sale*. Given these two countering effects of the proposed legislation, OTR expects the net fiscal impact related to the utility sales to restaurants to be negligible.<sup>1</sup>

As written, the legislation could be read to exempt hotels from all their utility sales taxes. Under the current law, hotels are not exempt, and their utility consumption is significant. According to industry reports, hotels spend \$1,632 per year per room on natural gas and electricity expenditures. This suggests that in FY 2009, District of Columbia hotels would spend in excess of \$44 million annually on natural gas and electricity and pay a public utility tax that is equal to ten percent of their utility expenditures. Consequently, without further clarification, the proposed legislation would reduce revenues to the general fund by \$4.4 million FY 2009 and \$19.0 million in the FY 2009 through FY 2012 financial plan period. Additionally, non-residential public utility customers pay an additional one percent tax, which is transferred to the ballpark revenue fund. Exemption of hotels would reduce this transfer by \$440,587 in FY 2009 and \$1.9 million in the FY 2009 through FY 2012 period.

| Fiscal Impact of B18-21 Processing Sales Tax Clarification Act of 2009<br>FY 2009 – FY 2012 |              |              |              |              |                   |
|---|--------------|--------------|--------------|--------------|-------------------|
|   | FY2009       | FY2010       | FY2011       | FY2012       | FY2009-<br>FY2012 |
| Total number of hotel rooms <sup>a</sup>  | 27,000       | 27,000       | 27,000       | 27,000       |                   |
| Utility expenditure per room <sup>b</sup>   | \$1,632      | \$1,713      | \$1,799      | \$1,889      |                   |
| Total Utility Expenditure <sup>c</sup>  | \$44,058,702 | \$46,261,637 | \$48,574,719 | \$51,003,455 | \$189,898,512     |
| Reductions to General Fund <sup>d</sup>   | \$4,405,870  | \$4,626,164  | \$4,857,472  | \$5,100,345  | \$18,989,851      |
| Reductions to Ballpark<br>Transfer <sup>e</sup>   | \$440,587    | \$462,616    | \$485,747    | \$510,035    | \$1,898,985       |
| Total Fiscal Impact   | \$4,846,457  | \$5,088,780  | \$5,343,219  | \$5,610,380  | \$20,888,836      |

<sup>a</sup> Data from Smith Travel Research, January 2009.

<sup>b</sup> This number is based on the data from Hospitality Research Group of PFK Consulting, an industry research group.

<sup>c</sup> The energy utility costs are expected to grow at 5 percent annually, based on the average annual growth between 2000 and 2009 measured in the first month of each year by Bureau of Labor Statistics.

<sup>d</sup> Public utilities tax rate is 10 percent of total sales.

<sup>e</sup> The ballpark transfer is 1 percent of all utilities sales to non-residential customers in the District of Columbia.

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<sup>1</sup> Additionally OTR expects longer term cost savings from the proposed legislation, which would eliminate the certification process and allow utilities to directly administer the program. The savings are likely to be small during the financial plan period since much of the administrative cost is tied to auditing of refund claims, which is likely to continue until the statute of limitations on these audits expires at the end of three years.